

Message Text

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DRAFTED BY L/SCA:HRGAITHER:EDD

APPROVED BY L/M:KEMALMBORG

TREASURY - MR. J. CLAWSON

JUSTICE - MR. J. KEENEY

SEC - MR. I. PEARCE

L/T - MRS. E. MCDOWELL

EUR/CE - MR. B. FLATIN

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FM SECSTATE WASHDC

TO AMEMBASSY BERN PRIORITY

C O N F I D E N T I A L STATE 051666

E.O. 11652: GDS DECLASSIFY JUNE 30, L975

TAGS: PFOR, CFED, SZ (JUDICIAL ASSISTANCE TREATY)

SUBJECT: SWISS TREATY AND SWISS IMPLEMENTING LEGISLATION.

REF: BERN 890.

1. U.S. TEAM HAS REVIEWED EMBASSY RECOMMENDATIONS CONTAINED REFTTEL AS WELL AS COMMENTS OF GOS (MARKEES). JUSTICE HAS REVIEWED LEGAL ASPECTS OF A SOLUTION TO THE PROBLEM CAUSED BY SWISS IMPLEMENTING LEGISLATION AND TEAM CONCURS THAT PROBLEM MAY WELL BE RESOLVABLE ALONG LINES CONTAINED IN DRAFT NOTE SENT SEPTTEL.

2. IN ADDITION TO NOTE, AN AIDE-MEMOIRE HAS ALSO BEEN PREPARED TO OUTLINE TO GOS THE BASIS FOR THE PROPOSAL AND TO PUT ON THE RECORD THAT WE VIEW THE PROBLEM TO BE ON THEIR SIDE. FURTHER, THE AIDE-MEMOIRE IS INTENDED TO CONVEY -- ALSO FOR THE RECORD -- THE FACT THAT ALTHOUGH THE
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U.S. PROPOSAL HAS BEEN CAREFULLY THOUGHT OUT AND RESEAR-

CHED, IN THE FINAL ANALYSIS ONLY A COURT TEST WILL DETERMINE WHETHER WE HAVE CORRECTLY INTERPRETED THE PERTINENT U.S. PROCEDURAL RULES. IF A COURT DETERMINES THAT THE PROPOSED PROCEDURE IS NOT LEGALLY ACCEPTABLE, WE WILL LOOK TO THE GOS TO RESOLVE THE MATTER SINCE WE REGARD OUR RIGHTS UNDER THE TREATY IN ARTICLE 12, PARAGRAPH 1, AS BEING UNAMBIGUOUS.

3. (BEGIN FYI) WHILE THE U.S. TEAM IS MOST APPRECIATIVE OF THE EMBASSY EFFORTS AND DIFFICULTIES IT FACES IN TRYING TO RESOLVE THIS UNFORTUNATE SITUATION, IT IS OF THE VIEW THAT THE MATTER SHOULD BE RAISED ABOVE MARKEES. IN TEAM'S VIEW, MARKEES IS RESPONSIBLE FOR THE SITUATION IN WHICH WE FIND OURSELVES AND HIS PERSONAL PRIDE IS INVOLVED. ON BASIS OF TEAM'S EXPERIENCE WITH MARKEES, IT IS FELT THAT HE WILL BE MOST RELUCTANT TO ATTEMPT TO RESOLVE THE SITUATION IN ANY WAY WHICH RECOGNIZES THAT A PROBLEM WAS CREATED. AS INDICATED PREVIOUSLY, TEAM HAS CONCLUDED THAT THE EXCHANGE OF NOTES IS NECESSARY. THE EXCHANGE WILL RAISE THE PROBLEM TO A LEVEL HIGHER THAN MARKEES IN THE GOS WHERE OTHERS ABOVE HIM MIGHT VIEW PROBLEM IN LARGER CONTEXT AND BE MORE RECEPTIVE. (END FYI)

4. EMBASSY REQUESTED TO PROPOSE EXCHANGE OF NOTES WITH FPD (SENT SEPTTEL), AND AT SAME TIME DELIVER AIDE-MEMOIRE (ALSO SENT SEPTTEL). IN EVENT EMBASSY PERCEIVES ADVISABILITY AMEND EITHER NOTE OR AIDE-MEMOIRE, CHANGES SHOULD BE SUBMITTED TO DEPARTMENT FOR APPROVAL PRIOR TO DELIVERY TO GOS. INGERSOLL

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